

THE WHITE HOUSE

WASHINGTON

September 8, 1975

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MEMORANDUM FOR:

HENRY A. KISSINGER

FROM:

PHILIP BUCHEN *P.W.B.*

SUBJECT:

Requirements of Section 662(a),
The Foreign Assistance Act of
1961, as Amended, Concerning
Expenditures for Certain CIA
Operations

1. The Statutory Provision

Section 662 of the Foreign Assistance Act of 1961, as Amended (22 U.S.C.A., Sec. 2422) reads in its entirety as follows:

- (a) No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.
- (b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

The required finding by the President

(a) When it must be made

The statute makes a finding by the President a condition precedent to the expenditure of funds for an operation that is covered by the statute. Therefore, no funds should be expended until after the President has made his finding.

(b) What the finding should be

The President must find for each operation that it is "important to the national security of the United States."

(c) How the finding should be made

As a matter of good practice, it should be in writing, signed by the President and should be supported by documents which the President has reviewed and which give a description and scope of the proposed operation and give a basis for determining that the proposed operation is important to the national security of the United States.

(d) Dissemination of finding

There appears to be no requirement under Section 662 (a) that the President's written finding must be furnished to the appropriate Committees of the Congress; only that "a description and scope" of the operation covered by the finding be reported to such Committees. Before Section 662 was added to the Act in 1974, there was a more general provision about Presidential findings, namely Section 654 (22 U.S.C.A. Sec. 2414). It relates only to cases where the "President is required to make a report ... concerning any finding or determination" under the Act. Then the following provision appears in Subsection (c) in respect to such a Presidential finding.

"[It] shall be published in the Federal Register as soon as practicable after it has been reduced to writing and signed by the President. In any case in which the President concludes that such publication would be harmful to the national

security of the United States, only a statement that a determination or finding has been made by the President, including the name and section of the Act under which it was made, shall be published."

This section was tailored to the situation where the finding itself was to be reported to Congress, and it does not cover the situation under Section 662 where the reporting requirements deal not with the finding itself or the basis on which it has been made, but with a description of the operation which follows from the finding.

Moreover, in the case of findings under the new Section 662 even a public disclosure that a finding was made under that section would itself be harmful to the national security and would vitiate the President's authority to have the CIA carry out covert operations. Public notice that a finding has been made in the context of known developments or events within a particular country would inevitably allow inferences as to the location and purpose of the planned covert operation, even though the published notice did not by itself disclose such information.

It is evident from the legislative history of Section 662 that it was a sui generis provision, that it was conceived and adopted without consideration of any other provisions in the Act, that its purpose was to provide information for only the jurisdictional committees concerned with CIA operations and the respective Senate and House Committees on Foreign Relations and on Foreign Affairs, and that even for the particular committees to be involved "the quality or the detail or the minutia" of the report would be up to the President (Congressional Record of October 2, 1974, p. S.18063-5; House Conference Report 93-1610 of December 17, 1974 on S. 3394 at pp. 42-3). In the Conference Report, it was stated:

"The committee of conference agreed that strict measures should be taken to insure maximum security of the information submitted to the Congress pursuant to this provision."

Such measures would be in vain if the existence of a covert operation became known through a publication requirement of any kind as provided in Section 654.

Therefore, it is concluded that the purpose and effect of Section 654 conflicts with Section 662, with the intent of Congress when it enacted the latter section, and with the right and authority of the President in the protection of national security and the conduct of foreign affairs. Consequently, there exists no dissemination or publication requirement for a finding by the President under Section 662.

3. The required reports by the President to the appropriate Committees of the Congress

(a) When they must be made

Section 662 was added in 1974 to the Foreign Assistance Act. The attached memorandum from the CIA makes a convincing argument for interpreting the words "reports, in a timely fashion" to mean that the act of reporting is not a condition precedent to expenditure of funds. It deals with the ambiguity created by the words "unless and until" which precede the verb "finds" and the verb "reports" but which cannot apply to both verbs without rendering nugatory the next words "in timely fashion." It resolves this ambiguity by concluding that the words "in timely fashion" give to the reporting requirement a status different from the finding requirement so as to allow reports to be made after the start of expenditures. This is certainly a valid interpretation, and it allows for reasonable time to include all the appropriate committees as recipients of the required reports. For purposes of demonstrating good faith compliance with these reporting requirements, the report of each operation

should be made with due and deliberate speed. The Chairman of each Committee should be notified of a finding by the President as soon as secure communication to him is possible, along with information as to the nature and location of the operation sufficient to permit the Chairman to judge how quickly he may want the "description and scope" to be reported. This method should satisfy the "timely fashion" requirement for each intended recipient of such a report, without in any way conceding that the report must precede the initiation of expenditures.

(b) The recipients of the reports

The language in Section 662 which specifies the recipients of reports is: "appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives." The history of the legislation indicates that beyond the two committees expressly included, the other committees (or subcommittees) were at the time of enactment intended to be "the present Armed Services Committees and the present Subcommittees handling the oversight of matters of intelligence and the CIA," the latter being subcommittees of the respective Senate and House Appropriations Committees (Congressional Record of October 2, 1974, p.5, S.18064). Since then the Senate and House have each created Select Committees with authority which includes investigation of the extent of, and necessity for, covert intelligence activities in foreign countries. However, these are committees of limited duration which have not supplanted in oversight of intelligence matters the previously established and continuing committees serving this purpose. [While the Select Committees may be entitled to the same information, this particular statute does not appear to require their inclusion as recipient of timely reports on each new operation covered by Section 662.]

(c) Who is to report

Section 662 requires the President to report, but there is nothing to prevent him from delegating his authority and responsibility in that regard, as he has done, to the Director of CIA. It may be better practice in the future to have the President, when he makes a written finding, delegate in writing to the Director the authority and responsibility to make the required reports.

(d) Form and content of reports

The reports have to provide "a description and scope" of each operation. According to the legislative history, and as has been accepted in practice, the reports may be oral. Also, in the process of the Congressional debates the words "detailed description of the nature and scope" were deliberately changed to allow latitude on the part of the President. (See Congressional Record of October 2, 1974 at S.18063-4).

(e) Record of reports

Apart from whatever record each recipient committee may make of each report, it will be good practice for the Director of CIA to provide a full record for the President of the time, nature and scope of each preliminary approach and ultimate report made pursuant to Section 662.

cc: William Colby ✓
Jim Lynn

MEMORANDUM

SUBJECT: Legislative History Surrounding Reporting Requirement
for Covert Action Expenditures (P. L. 93-559, Section 32)

Question: Is the reporting to appropriate committees of the Congress of the Presidential finding a condition precedent to the expenditure of funds?

Answer: No. To interpret new Section 662 of the Foreign Assistance Act of 1961, as amended, in this fashion would require that no force or effect be given to the adverbial phrase, "in a timely fashion," which modifies the verb "reports" in the legislation. Various versions of the provision during its legislative processing in the Congress clearly established a condition precedent requirement in one case relating to the Presidential finding and in the other case relating to both the finding and the report, yet the conferees chose to reject such formulations with respect to the reporting requirement imposed in the provision, as outlined below:

A. Senate Version - Made the finding and the reporting both a condition precedent to the expenditure for funds for covert actions by using the phrase, "if, but not before," as the full modifier. (See attachment A)

B. House Committee - Such expenditures were prohibited "unless" there was a Presidential finding to be reported "in a timely fashion." In giving any meaningful reading to these words, one must conclude that the word "unless" modifies the finding requirement and the phrase "in a timely fashion" modifies the reporting requirement. Clearly, the House Committee version no longer has a single modifier as the earlier Senate version.
(See attachment B)

C. House Floor.

1) There was some concern that the word "unless" did not impose a condition precedent of the Presidential finding before covert action funds could be expended. This led to the adoption of an amendment so that the modifier applying to the Presidential finding became "unless and until."

2) In a colloquy designed to bring out the meaning of the provision, the provision was:

a) Characterized as "restraining certain operations of CIA to those 'important to the national security' and in a timely fashion they are obliged to bring to the notice of Congress any activities in which the CIA may be engaged in..." (Emphasis added)

b) Was further characterized as carrying out and providing a further statutory basis for an understanding between the Secretary of State, the Director of Central Intelligence and the committee reporting the provision to report to that committee actions in which the Agency was engaged. Such a report was not a condition precedent to engage in such activities but to keep the committee informed of intelligence activities relating to foreign policy. (A similar requirement was subsequently approved as a special oversight function of the Committee on Foreign Affairs.) (See attachment C)

D. Conference - There were several versions of language before the conferees:

1) The Senate version clearly established Presidential finding and reporting as a condition precedent to the expenditure of funds.

2) The House version clearly imposed by the words "unless and until" such a condition precedent only with respect to the finding, not with respect to the reporting, if we are to follow rules of statutory construction designed to give meaning to words used, i. e., "reports, in a timely fashion."

3) Finally, the House conferees were aware that the reporting requirement was similar to a procedure worked out by the committee reporting the legislation and Executive Branch officials which in itself had been recently incorporated into the new rules of the House of Representatives. There is no evidence that these procedures or rules contemplated any reporting to the committee prior to the undertaking of action. In fact, the colloquy referred to above indicates the opposite to be the understanding.

E. Procedures After Enactment - The six committees of Congress receiving reporting under this provision of law realize that they are getting reporting after the fact but in a "timely fashion." One of the members of these committees has introduced a bill which among other things makes it clear that the reporting must be accomplished prior to the commencement of the activities, in recognition that the current law does not so provide. (See attachment D)

An act to amend the Foreign Assistance Act of 1961, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Assistance Act of 1974".

(b) Section 112 of such Act is repealed.

LIMITING INTELLIGENCE ACTIVITIES

SEC. 25. Chapter 3 of part III of the Foreign Assistance Act of 1961, as amended by sections 23(a) and 24 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 601. LIMITATIONS UPON INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency or any other agency of the United States Government for the conduct of operations in foreign countries pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403), other than operations intended solely for obtaining necessary intelligence. Notwithstanding the foregoing limitation, the President may authorize and direct that any operation in a foreign country be resumed, or that any other operation in a foreign country be initiated, and funds may be expended therefor, if, but not before, he (1) finds that such operation is important to the national security, and (2) transmits an appropriate report of his finding, together with an appropriate description of the nature and scope of such operation, to the committee of the Congress having jurisdiction to monitor and review the intelligence activities of the United States Government.

"(b) The provisions of subsection (a) of this section shall not apply during military operations by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."

8 "SEC. 660. LIMITATION ON INTELLIGENCE ACTIVI-
9 TIES.—(a) No funds appropriated under the authority of this
10 or any other Act may be expended by or on behalf of the Cen-
11 tral Intelligence Agency for operations in foreign countries,
12 other than activities intended solely for obtaining necessary
13 intelligence, unless the President finds that each such opera-
14 tion is important to the national security of the United States
15 and reports, in a timely fashion, a description and scope of
16 such operation to the appropriate committees of the Con-
17 gress, including the Committee on Foreign Relations of the
18 United States Senate and the Committee on Foreign Affairs
19 of the United States House of Representatives.

20 "(b) The provisions of subsection (a) of this section
21 shall not apply during military operations initiated by the
22 United States under a declaration of war approved by the
23 Congress or an exercise of powers by the President under
24 the War Powers Resolution."

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LIMITING INTELLIGENCE ACTIVITIES

SEC. 27. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new section:

"SEC. 659. REIMBURSABLE DEVELOPMENT PROGRAMS.—The President is authorized to use up to \$2,000,000 of the funds made available for the purposes of this Act in each of the fiscal years 1975 and 1976 to work with friendly countries, especially those in which United States development programs have been concluded or those not receiving assistance under part I of this Act, in (1) facilitating open and fair access to natural resources of interest to the United States and (2) stimulation of reimbursable aid programs consistent with part I of this Act. Any funds used for purposes of this section may be used notwithstanding any other provision of this Act.

"SEC. 660. LIMITATION ON INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports in a timely fashion a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."

LIMITATION ON MILITARY ASSISTANCE AND EXCESS DEFENSE ARTICLES IN KOREA

SEC. 28. (a) The aggregate amount of—

(1) funds obligated or reserved for military assistance, including supply operations under chapter 2 of part II of the Foreign Assistance Act of 1961;

(2) the acquisition cost of excess defense articles, if any, ordered under part II of the Foreign Assistance Act of 1961 and not charged against appropriations for military assistance;

(3) credits, including participations in credits, extended pursuant to section 23 of the Foreign Military Sales Act; and

(4) the principal amount of loans guaranteed pursuant to section 24(a) of the Foreign Military Sales Act;

with respect to South Korea shall not exceed \$145,000,000 for fiscal year 1975 until the President submits a report to the Congress after the date of enactment of this Act stating that the government of South Korea is making substantial progress in the observance of internationally recognized standards of human rights.

(b) After the submission of the report under subsection (a), the aggregate amount described in paragraphs (1), (2), (3), and (4) of such subsection with respect to South Korea shall not exceed \$165,000,000 for fiscal year 1975.

(c) The provisions of section 508 and section 614 of the Foreign Assistance Act of 1961, or of any other law, may not be used to exceed the limitation under subsection (a) or (b).

LIMITATION ON ASSISTANCE FOR INDIA

SEC. 29. The total amount of assistance provided under the Foreign Assistance Act of 1961 and under the Foreign Military Sales Act for India shall not exceed \$50,000,000 in fiscal year 1975.

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provides that the Caribbean Development Bank may funds provided to the Bank by the United States.

Mr. MORGAN. Mr. Chairman, I now move that all debate on the bill and all amendments thereto cease at 7 o'clock.

The motion was agreed to.

POINT OF ORDER

Mr. CARNEY of Ohio. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. CARNEY of Ohio. What about those of us who have had amendments at the desk all day?

The CHAIRMAN. Have they been printed in the Record?

Mr. CARNEY of Ohio. No; but I gave them to the desk today.

The CHAIRMAN (Mr. PRICE of Illinois). If the amendments are printed in the Record, under the Rules of the House the proponents will be entitled to 5 minutes of debate.

Members standing at the time the motion was made will be recognized for 1 minute each.

The Chair recognizes the gentleman from New York (Mr. HOLTZMAN).

AMENDMENT OFFERED BY MR. HOLTZMAN

Ms. HOLTZMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOLTZMAN: Page 23, line 14, strike out "important to the national security" and insert in lieu thereof "vital to the national defense".

Ms. HOLTZMAN asked and was given permission to revise and extend her remarks.)

Ms. HOLTZMAN. Mr. Chairman, the purpose of this amendment is very simple. It is designed to enlarge congressional control over the Central Intelligence Agency's non-intelligence-gathering functions.

The provisions of this bill relating to the CIA constitute a major improvement over the situation in the past. This bill permits the CIA to engage in covert activities only after the President reports about these activities to the House and Senate committees dealing with foreign affairs and the House and Senate Armed Services Committees.

Despite the improvement, I still think these provisions are seriously deficient. This bill authorizes CIA activities designed to subvert or undermine foreign governments so long as they are "important to national security." This rubric is so broad as to be almost meaningless. Thus, the President is empowered to authorize CIA actions to subvert foreign governments basically when he thinks it would be desirable. It seems to me, however, that the circumstances in which the CIA ought ever to be permitted to subvert a foreign government with which we are at peace should be very limited at best.

My amendment would permit the CIA to engage in non-intelligence-gathering activities only when such activities are "vital to our national defense." My amendment would help the poverty-stricken

foreign policy is in essence being created by the President, the CIA, and four committees of Congress.

I urge support of my amendment.

The CHAIRMAN. The time of the gentleman has expired.

The Chair recognizes the gentleman from Michigan (Mr. NEDZI).

Mr. NEDZI. Mr. Chairman, I rise in opposition to the amendment.

We have in this bill a provision restraining certain operations of the CIA to those "important to the national security" and in timely fashion they are obliged to bring to the notice of Congress any activities which the CIA may be engaged in which are important to the national security. I submit that is a very important statutory provision and a departure from what the situation is at the present time. When we speak about matters "vital to the national defense" we are then it seems to me restraining the agency from perhaps operating in antidrug programs or the agency could be prevented from conducting antiterrorist activities programs, among others. In my judgment it just is not the kind of constraint that it is desirable to apply with respect to the President and the CIA. The language offered has broad implications and should not be approved without careful and detailed consideration by appropriate committees prior to bringing the matter before the entire House under circumstances of very limited debate.

While I have a moment I would like for the purpose of clarification inquire of the chairman what his interpretation of the language in the bill relating to reporting to Congress by the CIA is, particularly as it relates to the understanding we reached with the Secretary of State and the Director of Central Intelligence.

Mr. MORGAN. If the gentleman will yield, it is my belief that the amendment contained in the committee bill carries out, and provides further statutory basis for the implementation of, the understanding to which the gentleman has referred as it applies to the foreign policy-related operations of the CIA.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. MORGAN).

Mr. MORGAN. Mr. Chairman, the committee adopted an amendment to bring the CIA under more effective congressional control and the author of the amendment, the gentleman from California (Mr. RYAN), is here. I yield to him to speak in opposition to this amendment.

Mr. RYAN. Mr. Chairman, I oppose this amendment for I think substantive reasons. This was my amendment in the committee and it was very carefully worked out. We deal here with a very sensitive area. It was my intention and the intention of the committee to try to bring the CIA under some kind of jurisdiction by the Foreign Affairs Committees because obviously the decisions our foreign affairs.

The CHAIRMAN. The Chair recog-

man from New Jersey (Mr. FRELINGHUYSEN).

Mr. FRELINGHUYSEN. Mr. Chairman, I should like to speak in opposition to the amendment. In my opinion we should have reservations about the language in the committee bill with respect to intelligence activities. And certainly we would be very unwise to change the language of "important to the national security" to "vital to national defense." This would preclude many activities which might well be needed in our own interest. I hope this amendment is soundly defeated.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. HALEY).

(By unanimous consent, Mr. HALEY yielded his time to Mr. MORGAN.)

Mr. MORGAN. Mr. Chairman, I yield to the gentleman from California (Mr. RYAN).

Mr. RYAN. Mr. Chairman, I was about to say that present language in this bill is very carefully drawn to derive the maximum amount of support from the various elements involved. If we can get this language through for those who are interested in having some kind of closer supervision for the CIA activities, this particular amendment is one which members of the committee think will pass and which we would be able to have signed. Without this particular language, I think we will have serious problems with supervision of the CIA by the Foreign Affairs Committee.

I am concerned about the manner in which this particular subject is approached. On the one hand we have to be careful and delicate and on the other hand we do need jurisdiction.

Mr. Chairman, I oppose the amendment of the gentleman from New York because I believe that the language we have now is as strong as we can get at this particular time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. HOLTZMAN).

The amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Chairman, I do not have an amendment, but I would like to say that I intend to vote against this legislation. I intend to vote against it for many reasons; particularly so because we now owe \$503 billion. When we started this game of Gadsfather to all the world, we owed \$4 billion. The interest alone on our debt is as great as the budget was in 1940. There is no way under the Sun that this Nation can possibly grow all the food for the world, provide all the guns for the world, provide all the machinery for the world, and then provide a marketplace for all the world's goods.

We are as poor as any nation we are helping. When we consider the kind of life that we have become accustomed to with our standard of living; if we really want to help some nation that is in eminent danger of collapse, one might suggest the poverty-stricken country of Italy.

We sell this legislation many times

Rules of the House of Representatives

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SPECIAL OVERSIGHT FUNCTIONS

3. (a) The Committee on Armed Services shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving international arms control and disarmament and the education of military dependents in schools.

(b) The Committee on the Budget shall have the function of—

(1) making continuing studies of the effect on budget outlays of relevant existing and proposed legislation, and reporting the results of such studies to the House on a recurring basis; and

(2) requesting and evaluating continuing studies of tax expenditures, devising methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and reporting the results of such studies to the House on a recurring basis.

(c) The Committee on Education and Labor shall have the function of reviewing, studying, and coordinating, on a continuing basis, all laws, programs, and Government activities dealing with or involving domestic educational programs and institutions and programs of student assistance, which are within the jurisdiction of other committees.

(d) The Committee on Foreign Affairs shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

94TH CONGRESS
1ST SESSION

H. R. 8193

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1975

Mr. ADDABO introduced the following bill; which was referred to the Committee on International Relations

A BILL

To amend the Foreign Assistance Act of 1961 to require that the President's report to the Congress with respect to the use of funds by the Central Intelligence Agency for any nonintelligence gathering operation in a foreign country be made in writing prior to the commencement of such operation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 662 (a) of the Foreign Assistance Act of 1961
4 (22 U.S.C. 2422 (a)) is amended by striking out "reports,
5 in a timely fashion," and inserting in lieu thereof "reports
6 in writing, in a timely fashion prior to the commencement
7 of such operation."